

On behalf of Masimo Corporation, I urge the Antitrust and Modernization Committee to review the anticompetitive forces impacting hospital purchasing.

The group purchasing organizations (GPOs) were granted special exemptions from anti-kickback laws in an effort to help hospitals. Unfortunately, the exemptions have had unintended consequences due to the inherent conflict of interest created. The GPOs have become the gatekeepers for the nation's hospitals, yet they are paid by the very vendors that they put on contract. The largest vendors realized that they could use their volume as leverage to entice GPOs to adopt pricing/discount schemes to lock out their competition. The GPOs basically sell access to their members to the highest bidders and use anti-competitive contracting practices such as sole source contracts, commitment based pricing and bundling to make it economically unfeasible for their members to not comply.

The result has been a trend toward fewer contracted vendors and a virtual lock out of smaller vendors. And with most technological innovations coming from smaller companies, innovation has been negatively impacted.

My company, Masimo Corporation, introduced a new pulse oximeter in 1998. Pulse oximetry is the noninvasive measurement of oxygen in your blood and is a recognized standard of care for all surgical and critical patients. Our technology improved performance by a factor of 10x without increasing cost. But, instead of being welcomed, we were locked out of virtually every GPO due to an entrenched supplier owned by Tyco. We were denied a contract by the second largest GPO, despite their own technology assessment group recommending an award in the name of patient care. We were even denied a contract by the nation's largest GPO, which controls approximately 1/3 of the entire market, despite the fact that our pricing was at least 30% lower than the incumbent sole source supplier. We have since been added to more GPO contracts, but only as a result of Senate hearings held over the past few years.

The result of the current situation is that prices are sub optimal and patients are not receiving the best available care.

Additional detail can be found in our testimony before the Senate Subcommittee on Antitrust on April 30, 2002 and September 14, 2004.

Regards,

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